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*Attorneys for Defendant
Executive Risk Specialty Insurance Company*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LENSCRAFTERS, INC., and EYEXAM OF CALIFORNIA, INC.,

No. C07-02853 SBA

[Related Case No. C 04-01001 SBA]

**STIPULATION AND [PROPOSED]
ORDER DISMISSING CERTAIN
COUNTERCLAIMS AND CROSS-
CLAIMS WITHOUT PREJUDICE**

Plaintiffs,

V.

LIBERTY MUTUAL FIRE INSURANCE COMPANY; EXECUTIVE RISK SPECIALTY INSURANCE COMPANY; UNITED STATES FIRE INSURANCE COMPANY; MARKEL AMERICAN INSURANCE COMPANY and WESTCHESTER FIRE INSURANCE COMPANY,

Defendants.

AND RELATED CROSS ACTIONS

Pursuant to Fed. R. Civ. P. 41(a), the parties to this action hereby stipulate as set forth below.

WHEREAS, on September 4, 2007, defendant/cross-claimant Executive Risk Specialty Insurance Company (“ERSIC”) filed a Counterclaim against Plaintiff/Counter-Defendants LensCrafters, Inc. and EYEXAM of California, Inc. (collectively “LensCrafters”) and a Cross-Complaint against Liberty Mutual Fire Insurance Company (“Liberty”), United States Fire

1 Insurance Company ("U.S. Fire"), Markel American Insurance Company ("Markel") and
2 Westchester Fire Insurance Company ("Westchester") in this matter;

3 WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its
4 Cross-Complaint as against Liberty and Westchester;

5 WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer
6 and Counterclaim in response to ERSIC's Cross-Complaint.

7 WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against
8 each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially
9 unnecessary litigation costs;

10 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to
11 the present action, through their attorneys of record, that

12 (1) ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without*
13 *prejudice* as to U.S. Fire, and

14 (2) U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED
15 *without prejudice* as to ERSIC.

16 DATED: November 20 2008 ORRICK, HERRINGTON & SUTCLIFFE LLP
17

18 By _____
19 Darren Teshima

20 Attorneys for Plaintiffs
21 LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA,
22 INC.

23 DATED: November __, 2008 ROSS, DIXON & BELL, LLP
24

25 By _____
26 Terrence R. McInnis
27 Attorneys for Defendant
28 EXECUTIVE RISK SPECIALTY INSURANCE
COMPANY

1 Insurance Company (“U.S. Fire”), Markel American Insurance Company (“Markel”) and
2 Westchester Fire Insurance Company (“Westchester”) in this matter;

3 WHEREAS, ERSIC previously dismissed its Counterclaim against LensCrafters and its
4 Cross-Complaint as against Liberty and Westchester;

5 WHEREAS, on July 31, 2008, defendant and counter-claimant U.S. Fire filed an Answer
6 and Counterclaim in response to ERSIC’s Cross-Complaint.

7 WHEREAS, ERSIC and U.S. Fire have agreed to dismiss their respective claims against
8 each other without prejudice, pursuant to a tolling agreement, in order to avoid potentially
9 unnecessary litigation costs;

10 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to
11 the present action, through their attorneys of record, that

12 (1) ERSIC’s September 4, 2007 Cross-Complaint is and shall be DISMISSED *without*
13 *prejudice* as to U.S. Fire, and

14 (2) U.S. Fire’s July 31, 2008 Counterclaim against ERSIC is and shall be DISMISSED
15 *without prejudice* as to ERSIC.

16 DATED: November ___, 2008 ORRICK, HERRINGTON & SUTCLIFFE LLP
17

18 By _____
19 Darren Teshima
20 Attorneys for Plaintiffs
21 LENSCRAFTERS, INC. and EYEXAM OF CALIFORNIA,
INC.

22 DATED: December 11, 2008 ROSS, DIXON & BELL, LLP
23

24 By /s/ Terrence R. McInnis
25 Terrence R. McInnis
26 Attorneys for Defendant
27 EXECUTIVE RISK SPECIALTY INSURANCE
COMPANY

1 DATED: December 11, 2008 LONG & LEVIT LLP
2

3 By /s/ Chip Cox
4 Chip Cox
5 Attorneys for Defendant
6 MARKEL AMERICAN INSURANCE COMPANY

7 DATED: December 11, 2008 SQUIRE SANDERS & DEMPSEY L.L.P.
8

9 By /s/ Amy Rose
10 Amy E. Rose
11 Attorneys for Defendant
12 UNITED STATES FIRE INSURANCE COMPANY

ORDER

13 Good cause appearing, IT IS HEREBY ORDERED that:

- 14 1. ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *without*
15 *prejudice* as to U.S. Fire, and
16 2. U.S. Fire's July 31, 2008 Counterclaim against ERSIC is and shall be
17 DISMISSED *without prejudice* as to ERSIC.

18
19 DATED: 1/9/09


UNITED STATES DISTRICT JUDGE

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